IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case
Date of decisions: 08.11.2006

Criminal Appeal No. 355 of 2001
(Old No. 2636 of 1986)

1. Radhakrishna
   S/o Gauri Shankar
   R/o Village Akalapur
   P.S.
   District Etawah.
2. Uma Shanker
   S/o Phaujdar Prasad
   R/o Dehradun Roadway, Rishikesh
   P.S. Rishikesh, District Dehradun

……..Appellants

Versus

State
……..Respondent.

Shri J.P. Joshi and Shri L.K. Tewari, learned counsel for the appellants.
Shri Nandan Arya, learned A.G.A. for the State.

A.F.R. (Approved for Reporting)
Not approved for reporting

(Initial of Judge)

Date 08.11.2006

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

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Hon'ble Prafulla C. Pant, J

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.) is directed against the judgment and order dated 04.10.1986, passed by learned Sessions Judge, Tehri Garhwal, in Sessions Trial No. 12 of 1984, whereby accused/appellants Radhakrishna and Uma Shankar have been convicted under Section 304 (Para-2)/34 and 273/34 of Indian penal Code, 1860, (for brevity herein after referred as I.P.C.) and each one of them has been sentenced to undergo rigorous imprisonment for a period of five years (under Section 304 (Part II)/34 of I.P.C.) and rigorous imprisonment for a period of six months (under Section 273/34 I.P.C.). The trial court directed that both the sentences shall run concurrently.

2. Heard learned counsel for the parties.

3. Prosecution story in brief is that on 21.06.1982, the accused/appellants with common intention, sold noxious liquor, popularly called 'Tunmri' (a mixture made of tincture belladonna and ashok liquid), in Kirti Nagar through their sale counter in shop Talwar Medical Store to Bhau Prasad, Jivanand (P.W. 11), Murari Lal (P.W. 9), Surendra Singh, Shiv Singh, Shyam Singh, Hari Singh, Bhupal Singh, Bhupat Singh (P.W. 10), Ahmad, Roshan, Chandra Singh, Tara Chand, Shiv Lal, Khantu, Kamal Singh, Chote Lal, Harshmani and Kishan Lal (deceased) and others. All those who purchased and consumed the noxious liquor as an intoxicant from the shop of the accused, fell seriously ill and unconscious. They were taken to the hospital. Out of those who consumed the said liquor, Kishan Lal died after consuming the 'Tumri'. It appears that First Information Report (Ext. A-3) was got lodged of the incident by P.W. 2 Aditya Pandey with the police station Kirti Nagar on 22.06.1982. Meanwhile, Sub-Divisional Magistrate (P.W. 1 Shri Narendra Kumar Joshi) on receiving information that spurious and injurious liquor is being sole to the members of the public, directed the Station Officer of police station Kirti Nagar on 22.06.1982 to raid the shop from where the liquor is being sold. On this, the police party raided the shop of the accused in Kirti Nagar and recovered the bottles of spurious liquor and prepared memo (Ext. A-4). The recovery memo discloses that the recovered illicit liquor was sealed in the presence of Sub-Divisional Magistrate after it was recovered from the

shop. Since Kishan Lal had died in the hospital, the police took his body in their possession and prepared inquest report (Ext. A-5) and other necessary papers, and sent the same for post mortem examination of the dead body. The post mortem examination was conducted by Dr. D.P. Joshi on 23.06.1982 at 11:30 A.M. who prepared the autopsy report. According to the autopsy report, cause of death of the deceased could not be ascertained, as such the viscera was preserved. It appears that the viscera and the contents of the bottles recovered from the shop were sent to the Chemical Examiner who corroborated that deceased did consume noxious liquor before his death. After interrogation of the witnesses and on completion of the investigation, a charge sheet against accused Radha Krishna and Uma Shanker, was filed before the Magistrate.

4. The Magistrate, it appears on receipt of charge sheet, after giving necessary copies to the accused persons, as required under Section 207 Cr.P.C., committed the case to the Court of Sessions for trail. Learned trail court after hearing the prosecution and the defence, framed charge of offence punishable under Section 273 read with 34 and 304 read with 34 against both the accused Radha Krishna and Uma Shankar, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Sub-Divisional Maigistrate Narendra Kumar Joshi, P.W. 2 Aditiya Bhushan Pandey (informant), P.W. 3 Constable Bhajan Singh (witness of the inquest report), P.W. 4 Vijendra Singh (a taxi wala, who took the unconscious persons to the hospital), P.W. 5 Sohan Nautiyal (witness of fact partly hostile), P.W. 6 Jitendra Prasad (landlord of the shop run by the accused), P.W. 7 Constable Janeshwar

Prasad (who took the sealed recovered bottles and viscera for medical examination to Agra), P.W. 8 Girdhari Lal (father of the deceased), P.W. 9 Murari Lal (one of the persons, who consumed the liquor), P.W. 10 Bhupat (another person who consumed the liquor and go affected by it), P.W. 11 Jiwanand (who also consumed the liquor and got affected), P.W. 12 Chirnajeev Lal (who detected that Kishan Lal, lying dead after consuming the liquor), P.W. 13 Rajendra Singh Negi (Sub-Inspector witness of recovery of bottles, P.W. 14 Sub-Inspector Nagendra Singh Rawat (Investigating Officer), P.W.15 Sub-Inspector Hajari Prasad (another Investigating Officer), P.W. 16 Dr. R.K. Purohit (who medically examined unconscious patients, who reached the hospital) and P.W. 17 Head Constable Shaligram, who prepared the check report of the First Information Report and made necessary entry in the general diary. The oral and documentary evidence was put to the accused persons under Section 313 of Cr.P.C. in reply to which they alleged the same to be false. However, no evidence in defence was given. The trial court after hearing the parties found both the accused/appellants Radha Krishan and Uma Shankar guilty of offence punishable under Section 273 read with 34 I.P.C. and under Section 304 (Para-II) read with 34 I.P.C. After hearing on sentence, each one of the convict was sentenced to rigorous imprisonment for a period of five years (under Section 304 (Para-II) read with 34 I.P.C.) and to rigorous imprisonment for a period of six months (under Section 273 read with 34 I.P.C.) Aggrieved by said judgment and order dated 04.10.1986, this appeal appears to have been filed in that year in the Allahabad High Court and received by transfer

to this Court under Section 35 of Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here that as per the Chemical examiner, who has sent his report of viscera of the deceased and he recovered bottles from the shop of the accused, has reported that the bottles contained alcohol and medriatic alcolide poison (Ext. A-57) and in the items of viscera also alcohol and medriatic alcolide poison was found (Ext. A-58).

6. P.W. 1 Narendra Kumar Joshi, Sub-Divisional Magistrate, has stated on oath that on 22.06.1982, he received information that in Kirti Nagar, several persons are lying unconscious after taking spurious liquor. The witness has further stated that he directed the police to raid the shop from where the liquor is being sold. The witness has further stated that after recovery was made in the presence of five witnesses, the bottles recovered were sold and the recovery memo was prepared.

7. P.W. 2 Aditiya Bhusahn Pandey, who lodged the First Information Report with the police has stated that accused Uma Shanker and Radha Krishan, were running the shop under the title ‘Talwar Medical Store’ from which spurious liquor was being sold and the people after consuming the liquor got unconscious. This witness has further stated that several person were taken in an unconscious condition to the hospital. P.W. 4 Brijendra Singh is taxi wala, who has stated that he took unconscious patients to the hospital.

8. P.W. 8 Girdhari Lal, has stated that his son Kishan Lal (deceased) died in the incident. He is also witness of the inquest report of the dead body of his son. P.W. 3 Constable Bhajan Singh is another witness of the inquest report. P.W. 4 Brijenda Singh has corroborated the fact that in the incident, several persons after taking liquor became unconscious.

9. P.W. 5 Sohan Nautiyal, is the person who stated that he himself took 'Tumri' and got unconscious but this witness has not disclosed from where he purchased the liquor. P.W. 6 Jitendra Prasad, is the landlord of the shop run by the accused in which liquor is said to have been sold. This witness has deposed that he let out the shop to the accused. According to this witness, the shop was taken on rent for selling medicines. He is also witness of the recovery of bottles from the shop of the accused after the police raided it. P.W. 9 Murari Lal, has stated that the liquor was purchased by him on 21.06.1982, at about 4:30 P.M. from the shop of the accused. This witness states that after consuming 'Tumri' he fell ill and was taken to hospital. This witness further states that he shared the bottle with Kishan Lal (deceased). P.W. 10 Bhupat Singh is also one of the victim, who consumed the liquor and fell unconscious. This witness has also stated that he purchased the 'Tumri' at about 5:00 P.M. on 21.06.1982 from the shop of the accused/ appellant. P.W. 11 Jivanand is also one of the person, who consumed liquor. He has stated that on 21.06.1982, he too purchased liquor from the shop of the accused at about 6:00 P.M. and got ill. This witness states that he regained consciousness in the hospital. P.W. 16 Dr.

R.K. Purohit, who examined the patients, admitted in the hospital at Srinagar, has proved the reports (Ext. A-20 to Ext. A-25 and Ext. A-26 to Ext. A-32). These reports indicate that most of the patients were semi conscious when they were taken to the hospital. The witness has further opined that it appears that the patients had consumed some poisonous substance of Belladona group.

10. From the above evidence on record, it is clearly established that both the accused who were running the shop in Kirti Nagar have knowingly sold a noxious liquor, which is an offence punishable under Section 273 I.P.C. It is further proved on the record that by selling said noxious substance, the accused have caused culpable homicide not amounting to murder of Kishan Lal, as they sold the noxious substance, which they knew that it may have caused the death of the person, who consumed it (without medical prescription).

11. On behalf of the appellants, it is argued that the alleged recovery of the bottles found in the shop in question was not made in the presence of the appellants and it can neither be connected with it nor it can be inferred that bottles were recovered from the possession or shop of the accused. The statement of the landlord P.W. 6 Jitendra Prasad read that the statement of P.W. 1 N.K. Joshi, Sub-Divisional Magistrate and other witnesses, clearly establishes that the bottles were recovered, as mentioned in the recovery memo. It is hard to believe that witnesses would falsely implicate that accused leaving the real culprits. There is no enmity of any of the witnesses with the accused.

12. It is also contended on behalf of the appellants that witnesses Bhupat (P.W. 10) and Jivanand (P.W. 11) were not named in the charge sheet, as such, their testimony should not be believed. There are several other witnesses of the fact who had seen the person lying unconscious in the incident, as such mere not disclosure of names of P.W. 10 and P.W. 11 in charge sheet does not create any reasonable doubt, as to the truthfulness of the prosecution story.

13. Lastly, it is also submitted that assuming the porsecution story to be true, the accused/appellant, Radha Krishan was simply an employee of co-accused Uma Shankar and had no knowledge of what were the contents of the bottles, which were said to have been sold to the persons affected by it. It is difficult to believe that the person, who was sitting in a medical store was not aware of what was being sold in the shop. As such, I see little merit in the submission.

14. For the reasons, as discussed above, this appeal is liable to be dismissed. The same is dismissed. The accused/appellants are on bail. Their bail is cancelled. The trial court would see that the accused/appellants serve out the unserved part of sentence.

Dt.08.11.2006 **(Prafulla C. Pant, J.)**
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